IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1619 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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YOGESHBHAI VANMALIDAS UNADKAT - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR MURALI N DEVNANI for Petitioner(s) : 1,
MS FALGUNI PATEL, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
MR HS MUNSHAW for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/11/2005

ORAL JUDGMENT

In the present petition, the petitioner who was holding the post of Deputy Sarpanch of village Talala, Dist: Junagadh has challenged the legality of the order

dated 1.12.2001 passed by the Additional Development Commissioner, Government of Gujarat, by which the Additional Development Commissioner was pleased to reject the appeal of the petitioner and upheld the order dated 5.1.2001 passed by the District Development Officer. By the order dated 5.1.2001, the District Development Officer had in exercise of powers under section 57(2) of the Gujarat Panchayats Act, 1993 (hereinafter to be referred to as “the said Act”) disqualified the petitioner for a period of five years.

2. For certain alleged irregularities having been committed by the petitioner in connivance with the Sarpanch of the Talala Gram Panchayat, notice under section 57(1) of the said Act came to be issued against both of them on 5.12.2000 calling upon them why they should not be removed from the respective posts. It appears that during the currency of the said proceedings, term of the Panchayat expired and proceedings for their removal therefore were rendered infructuous. The said authorities, therefore, issued notice under section 57(2) of the said Act seeking to disqualify the petitioner and the Sarpanch on account of their alleged irregularities. The petitioner replied to the show cause

notice and denied the charges. The charges levelled against the petitioner included those of financial irregularities. It was alleged, inter alia, that for the years 1994-95 and 1995-96, the petitioner in connivance with the Sarpanch had committed irregularities in the expenditure made in construction of roads and the expenditure ran into lacs of rupees which was not properly spent by the erring persons. It was alleged that certain roads were demolished without proper permissions. It was alleged that for demolishing the existing roads for construction of new roads, contracts were not given after giving wide publicity and after obtaining competitive rates and comparing the rates given by different parties. It was alleged that an amount of Rs.1,17,600/- was paid to the contractor towards rent of tractor which was not authorized since the contractor was himself responsible for employing his own tractor. It was alleged that an amount of Rs.4,65,170/- was paid towards rent of tractor which payment was made contrary to the terms of agreement and in excess of the agreed rates. It was further alleged that the contracts were sub-divided artificially to avoid taking permission from higher authorities. It was alleged that a large sum of Rs.7,31,400/- was given as advance which was not

permissible.

3. The petitioner denied the allegations and opposed the proposal for disqualification contained in the said show cause notice. The District Development Officer, however, after giving reasonable opportunity to the petitioner came to the conclusion that the charges were correct. The petitioner was found responsible in aiding the Sarpanch in carrying out such irregularities and illegal activities. It was found that the petitioner and the Sarpanch had indulged in large-scale financial irregularities and mismanagement of funds of the Panchayat. On account of these conclusions, the District Development Officer was pleased to pass the order disqualifying the petitioner for a period of five years in terms of the provisions of section 57(2) of the said Act. The appeal filed by the petitioner before the Additional Development Commissioner came to be dismissed by the impugned order and the order of the District Development Officer came to be upheld.

4. Learned advocate Shri Devnani appearing for the petitioner submitted that the authorities have taken unreasonable and harsh stand. It is contended that the

irregularities if at all were of procedural in nature and extreme step of disqualifying the petitioner for a period of five years could not have been taken. It is contended that the petitioner was an elected Deputy Sarpanch of the Gram Panchayat and even if some irregularities were found in his discharge of duties, for isolated incident of such irregularities, powers under section 57(2) of the said Act cannot be exercised.

5. I am unable to agree with the contentions of the learned advocate for the petitioner. The allegations levelled against the petitioner which ultimately were held to have been proved cannot be termed as those of mere technical or procedural irregularities. The defaults committed by the petitioner in connivance with the Sarpanch were substantive in nature and had an element of doubtful integrity. Large funds of the Panchayat were mismanaged and with impunity at several stages rules and instructions were disregarded. Payments were made in excess of agreement and contrary to the entitlement of the contractor. Sufficiently wide publicity was also not given before awarding the contract which involved expenditure of sizable amount. The petitioner, therefore, cannot take shelter of having

committed only procedural irregularities on an isolated occasion. I do not find any reason to interfere with the orders passed by the authorities below.

6. Reliance was placed on the decision of this Court in the case of Kamlaben Rohitbhai Patel v. Additional Development Commissioner, 2000(2) GLR 1174 wherein the learned Judge held that a Sarpanch cannot be removed for procedural irregularities or accounting procedure. For the reasons indicated herein-above, I am unable to accept that the petitioner had committed mere procedural irregularities.

Reliance was placed on the decision of this Court in the case of K.N.Pachar v. State of Gujarat, 2002(3) G.L.H. 739 wherein learned single judge observed that before removing a Sarpanch, the authorities must consider whether there is a genuine ground for his removal and whether there is persistent defaults in discharge of the duties. It may be noted that in the present case, there were strong grounds for passing the order in question. If the term of the Panchayat had not been expired, the petitioner would have been exposed to the possibility of removal from the position of Deputy Sarpanch. Sub-

section (2) of section 57 empowers the competent authority to disqualify a member or Sarpanch or Upa-sarpanch for a period not exceeding five years who has been found guilty of misconduct specified in sub-section (1) of section 57 or has been incapable of performing his duties and functions. Sub-section (1) of section 57 in turn provides that a member, Sarpanch or Upa-Sarpanch may be removed who has been found guilty of misconduct in the discharge of his duties or of any disgraceful conduct or abuses his powers or makes persistent default in the performance of his duties and functions under the Act or has become incapable of performing his duties and functions. In the present case, the charges levelled against the petitioner which ultimately were held to have been proved would amount to his being proved guilty of misconduct in discharge of his duties. This is not a case of persistent defaults. It is only when charges against a member, Sarpanch or Upa-Sarpanch commits defaults in duty, the question of being persistent or otherwise would assume significance.

Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Tarlochan Dev Sharma v. State of Punjab, (2001) 6 SCC 260 wherein the Hon'ble

Supreme Court drew a distinction between a singular or a casual aberration or failure in exercise of power which would be an honest or erroneous exercise of power as against willful abuse or intentional wrong. In the present case, the facts emerging from the record suggest that the petitioner had willfully and deliberately manipulated the funds of the Panchayat and action under sub-section (2) of section 57 of the said Act would be justified in such a case.

7. In the result, the petition cannot be entertained the same is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)